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20  
21 **UNITED STATES DISTRICT COURT FOR THE  
22 NORTHERN DISTRICT OF CALIFORNIA**

23  
24 REGENTS OF UNIVERSITY OF  
25 CALIFORNIA and JANET NAPOLITANO, in  
26 her official capacity as President of the  
27 University of California,

28 Plaintiffs,

v.  
1  
2 UNITED STATES DEPARTMENT OF  
3 HOMELAND SECURITY and ELAINE  
4 DUKE, in her official capacity as Acting  
5 Secretary of the Department of Homeland  
6 Security,

7 Defendants.

8  
9 No. 3:17-cv-05211-WHA  
10 No. 3:17-cv-05235-WHA  
11 No. 3:17-cv-05329-WHA  
12 No. 3:17-cv-05380-WHA  
13 No. 3:17-cv-05813-WHA

14  
15 **DEFENDANTS' EMERGENCY MOTION  
16 TO STAY DISCOVERY AND RECORD  
17 COMPLETION IN ALL DACA CASES**

18  
19 Judge: Honorable William Alsup  
20 Hearing: None Requested, or Thursday,  
21 November 30, at 8:00 a.m. or as soon as  
22 counsel may be heard  
23 Courtroom 8

**NOTICE OF MOTION AND MOTION  
TO STAY DISCOVERY AND RECORD COMPLETION IN ALL DACA CASES**

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:  
PLEASE TAKE NOTICE that, on Thursday, November 30, 2017, at 8:00 a.m., at 450 Golden  
Gate Avenue, San Francisco, California, Courtroom 8, or sooner to the extent the Court can  
accommodate this emergency request, Defendants in the related DACA matters (hereinafter,  
“DACA cases”) will and hereby move this Court for an Order staying discovery and the  
requirement that they complete the administrative record pending an application to the Supreme  
Court. The parties have stipulated to a shortened briefing schedule on this motion whereby  
Plaintiffs’ response will be due no later than noon PST on Monday, November 20, 2017, and  
Defendants will forego a reply brief. To further expedite the Court’s consideration of this  
request, Defendants are prepared to forego a hearing and have this Court rule on the submitted  
papers. Because the Defendants may seek Supreme Court review as soon as Monday, November  
20, Defendants request a ruling by that date.

This motion is made based on the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Appellate Procedure 8, which authorizes the District Court to stay an action, order, or judgment, pending resolution of an appeal; Supreme Court Rule 23.3, which provides that, absent extraordinary circumstances, a stay be sought first in an appropriate lower court; the accompanying memorandum and proposed order; all pleadings and filings in these matters; and such oral argument as the Court allows, if the Court deems oral argument necessary.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## INTRODUCTION

On September 21, 2017, this Court held a Case Management Conference at which it ordered that discovery would take place in these five related actions; it subsequently entered a Case Management Order permitting discovery. *See* Case Management Order for All DACA Actions in this District, ECF No. 49.<sup>1</sup> On October 17, 2017, this Court issued an Order to Complete the Administrative Record, ECF No. 79 (“Order”). That Order requires Defendants to

<sup>1</sup> References to docket numbers herein refer to the docket in Case No. 17-cv-05211-WHA. All DACA Cases (Nos. 17-5211, 17-5235, 17-5329, 17-5380, 17-5813)  
**EMERGENCY MOTION TO STAY**

1 “complete” the administrative record in various respects, including through the disclosure of  
2 privileged documents, and requires the submission of an additional privilege log and the  
3 submission of additional documents identified as privileged for in-camera review. This Court  
4 then entered an Order to Compile Supplement Forthwith. *See* ECF No. 80.

5 Defendants filed a petition for a writ of mandamus with the Ninth Circuit on October  
6 20, 2017. *See* ECF No. 86. On October 24, 2017, the Ninth Circuit issued an order staying both  
7 discovery and record supplementation in the district court. That stay was lifted when the Ninth  
8 Circuit issued its order denying defendants’ mandamus petition on November 16, 2017. Shortly  
9 thereafter, this Court issued an Order requiring the Defendants to complete the administrative  
10 record by November 22, 2017, at Noon PST. ECF No. 188.

11 On November 17, 2017, Defendants filed a motion for a stay with the Ninth Circuit (9th  
12 Cir. Stay Motion, attached hereto as Ex. A). That motion indicated that Defendants “will file an  
13 application seeking a further stay of all discovery and record expansion pending a petition for  
14 mandamus or a writ of certiorari from the Supreme Court no later than November 20, 2017.” *Id.*  
15 The next day, the Ninth Circuit entered a scheduling order requiring a response to the stay  
16 motion by noon PST on Monday, November 20, 2017, and an optional reply by 5:00 p.m. PST  
17 on Monday, November 20, 2017. *See* Ninth Circuit Order, attached hereto as Ex. B. The court  
18 also asked the parties to address “whether the court has jurisdiction to grant a stay of  
19 proceedings, or whether the motion for a stay should instead be filed in the district court.” Ex. B  
20 at 2 (citing *Ellis v. U.S. District Court*, 360 F.3d 1022 (9th Cir. 2004) (en banc)).

21 While Defendants continue to pursue a stay before the Ninth Circuit, Defendants are also  
22 now seeking relief from this Court. In accordance with Supreme Court Rule 23.3, Defendants  
23 respectfully request that this Court stay its Case Management Order to the extent that Order  
24 requires the parties to engage in discovery (ECF No. 49), as well as its Order to Complete the  
25 Administrative Record (ECF No. 79), as modified by its Order to Compile (ECF No. 80) and a  
26 subsequent Order to File the Completed Record and Propose Schedule (ECF No. 188), pending  
27 the Supreme Court’s resolution of Defendants’ forthcoming petition. In the alternative, and if  
28 this Court does not otherwise grant the relief being requested herein or the relief being requested

1 by Plaintiffs in their separate stay motion, *see* ECF No. 190, Defendants request either a stay  
 2 pending the Supreme Court's disposition of a stay application to be presented to the Supreme  
 3 Court, or at minimum a stay until the end of the day on November 27, 2017, in order to allow the  
 4 Supreme Court to orderly determine whether it wishes to grant an administrative stay while it  
 5 considers Defendants' application. Defendants will provide this Court with the copy of their  
 6 Supreme Court filing and advise this Court promptly of any developments.

7 Defendants are aware that Plaintiffs have filed a separate motion to stay and will respond  
 8 to that motion no later than noon PST on Monday, November 20, 2017. Defendants may also  
 9 need to seek additional relief from this Court because they will not be in a position to file a  
 10 completed administrative record by November 22, 2017, but will seek any such relief via  
 11 separate motion if the Court does not otherwise provide relief pursuant to the parties' pending  
 12 stay motions.

13 Dated: November 19, 2017

Respectfully submitted,

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 19 Assistant Branch Director

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